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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Advanced Television Systems and) MM Docket No. 87-268
 Their Impact upon the Existing)
 Television Broadcast Service)

**COMMENTS OF
 THE CITY OF NEW YORK BOARD OF EDUCATION
 ON THE EX PARTE SUBMISSION OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The City of New York Board of Education, licensee of noncommercial educational Station WNYE-TV, Channel 25, New York City, ("WNYE") hereby submits its Comments in opposition to the proposal to allocate DTV Channel 26 to Station WNYE-TV made in the Ex Parte Submission by the Association For Maximum Service Television, Inc. ("MST")¹ in the above-captioned proceeding.² That proposed allocation will result in Station WNYE-TV being able to serve less than 75% of its current service area and will deprive New York metropolitan area residents constituting a quarter of Station WNYE-TV's service area of the educational, ethnic and cultural programming they have been receiving from the station.

Moreover, the proposal is fundamentally inconsistent with the basic allocation criteria underlying the Commission's DTV assignments.

¹ See, Ex Parte Submission Based on New Technical Discoveries to Help the Commission Improve the DTV Table of Allotments/Assignments Submitted By the Association for Maximum Service Television, Inc. and Other Broadcasters ("Ex Parte Submission") filed on November 20, 1997.

² By Public Notice released on December 3rd, the Commission invited interested parties to file Comments on the MST submission by December 17, 1997.

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Argument

In its Ex Parte Submission, MST proposed a number of changes in the Commission's DTV channel assignments to address difficulties in the Commission's assignments identified by MST and others. MST asserts that, in making the adjustments to the Commission's DTV Table, that "[e]fforts were made to preserve most of the FCC's DTV assignments. Changes were made only where called for by the most extreme cases of interference." One of MST's proposed changes is to the DTV assignment for Station WNYE-TV. The FCC assigned DTV Channel 24 to Station WNYE-TV; MST proposes to assign Station WNYE-TV Channel 26, apparently to address some unidentified "extreme case of interference" implicating another station or stations. In so doing, however, MST would modify Station WNYE-TV's service area by nearly 25%, from 98.5% in the FCC Table to 74.9% in the MST Table, and deprive at least 1.14 million,³ if not 4.2 million, people currently receiving its programming of those programs.

The impact of this proposal on Station WNYE-TV is stark:

- no other station in the New York metropolitan area would suffer a comparable loss of its existing service area. Indeed, all of the other stations in the market will be able to serve 97% or more of their NTSC audience with their DTV signal.

³ According to Table 1A of the Ex Parte Submission, Station WNYE-TV's net population served would decline by 1.14 million. While MST did not include a map demonstrating the area in which Station WNYE-TV's coverage would be lost or whether there would be a gain in areas currently not served, it is reasonable to assume that the MST proposal would result in some gains as well as the losses. Thus, persons in some parts of Station WNYE-TV's present coverage area would lose service while some not presently receiving Station WNYE-TV's service would gain it. The loss of 1.14 million people projected by MST is thus a net loss. If this is true, then more than 1.14 million persons currently receiving Station WNYE-TV would lose service from the station.

- no other station in the neighboring states, including those in Philadelphia, would suffer a comparable loss. Those stations would all serve 92% or more of their current service area.
- no other station **in the country** would lose as many potential viewers as Station WNYE-TV -- more than 1.14 million -- and, as noted above, that figure is the net loss, including population in the service area gained less the population in the service area lost. Assuming an even population distribution throughout its service area, Station WNYE-TV would lose approximately **4.2 million** potential viewers.
- no other station **in the nation** would suffer a comparable reduction in service area and population between the MST and the FCC Table.

In short, no station in the country is treated as shabbily by the MST proposal as Station WNYE-TV.

In light of these facts, it is clear that the MST proposal violates one of the basic principles on which the Commission developed its DTV Table of Allotment -- that a station's DTV assignment should replicate to the extent possible a station's NTSC service area.⁴ As the Commission stated:

We believe that providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters. This approach will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.⁵

⁴ *Sixth Report and Order* in MM Docket No. 87-268, FCC7 Commun. Reg. 994 (¶¶ 29-33) (1997).

⁵ *Id.* at ¶29.

Relegating Station WNYE-TV to a service area that is only 74% of its current service area does not come close to achieving that objective and thus is too substantial a change to pass muster under the replication principle. That is especially true since **all** of the other stations in the New York market will be able to replicate more than 97% of their service areas and none of the stations in the neighboring States will suffer a dislocation that is nearly comparable.⁶

Further, while Station WNYE-TV is a noncommercial station and thus does not compete with its commercial counterparts for advertising revenue, it does compete for audience and that audience is essential to its ability to raise operating revenue. MST's proposal severely hobbles WNYE's ability to secure audience and, indeed prevent it from retaining its existing audience. Consequently, it poses a serious threat to WNYE's ability to bear the substantial costs of converting to digital transmission while continuing to provide the unique blend of educational, ethnic and cultural programming it offers to the New York metropolitan area. As the Commission is aware, noncommercial educational licensees face substantial obstacles in raising the funds to pay the sizable costs associated with the transition to digital and the need to operate two stations simultaneously during the transition period. Reducing a station's audience by 25% will aggravate this problem.

⁶ It is also not clear that Channel 26 is a viable DTV allotment since Channel 27 is allotted to Station WNYW. Since the two stations are located within a few miles of each other and Station WNYE-TV has been assigned an ERP of 81.5 kw as compared to Station WNYW-TV's 149 kw., the adjacent channel interference problem MST claims to have resolved would appear to remain with respect to Station WNYE-TV and pretermits its operation on Channel 26. Even if Station WNYE-TV could operate with the precise facilities assigned in the MST Table, the proximity of the two assignments could preclude Station WNYE-TV from increasing power in order to improve its coverage area or from relocating to another transmitter site.

This drastic cutback in Station WNYE-TV's service area will also have a significant adverse effect on the unique audiences served by the station. Station WNYE-TV is one of the few noncommercial educational television stations in the country still licensed to a local school board. The Board of Education is charged with educating the youth and the uneducated in its community. It has taken that charge seriously with respect to Station WNYE-TV, striving to address the needs and interests of the New York metropolitan area residents in a qualitatively distinct fashion from that of other broadcast stations. The New York City metropolitan area is, in turn, unlike any other area of the country with a population of more than 16 million persons, many of who come from widely different ethnic and cultural backgrounds. There are more people comprising more religious, racial, ethnic and national classifications than in any other U.S. city. The New York City public school system alone has approximately 1.1 million students age 18 or younger from all over the world -- Asia, the Caribbean, Eastern Europe, Africa, Latin America, the Middle East and myriad other places, both large and small. By virtue of its sheer size, the scope and severity of the urban problems confronting New York are arguably greater than those in any other American city.

As a municipally-owned station operated noncommercially, Station WNYE-TV addresses these persons and issues in an unparalleled fashion.⁷ Approximately half of the broadcast

⁷ Station WNYE-TV is the only noncommercial television station licensed to an instrumentality of New York City. Station WNET-TV, licensed to nearby Newark, addresses the needs of the greater Newark/New York urban area, although its high-quality, nationally distributed programming has a different and, in many ways, less local focus than does WNYE's programming. Moreover, with the recent sale to Dow Jones-ITT of WNYC-TV, previously licensed to the City of New York and operated largely noncommercially, the residents of the City must now rely to an even greater extent on the uniquely local services provided by City-owned WNYE-TV.

schedule day is devoted to instructional programming provided to schools through the metropolitan area, including New York City's 1200 elementary, junior high and high schools and to in-service programming for teachers and school staff. Another 27% of Station WNYE-TV's broadcast schedule is devoted to serving otherwise unserved and underserved ethnic and cultural communities in the New York metropolitan area. These include the Caribbean, Jewish, African-American and Asian communities, as well as immigrant groups served by programming in 11 languages, including Chinese, French, Bulgarian, Farsi, Italian, Hungarian, Spanish, Polish, Greek, Romanian, and Japanese. Only a small fraction of Station WNYE-TV's broadcast schedule is duplicative of programming on any other station serving the New York metropolitan area.

MST's proposal would deprive many of these audiences of this diverse programming, disenfranchising the small unique communities served by Station WNYE-TV. Yet this kind of cultural and educational programming targeted to the unserved and underserved is the very kind of programming the Commission sought to foster when it set aside television channels for educational use.⁸ It is the very kind of programming Congress sought to promote when it enacted the Public Broadcasting Act of 1967.⁹

It would be more than ironic if the Commission's decision to improve the quality and diversity of broadcast television service by moving to digital transmission were to result in diminishing the availability of this unique array of programming to students, teachers, ethnic and cultural groups in the New York metropolitan area who do not have any alternative source of

⁸ *Sixth Report and Order on Television Assignments*, 41 F.C.C. 148 (1952).

⁹ H.R. Rep. No. 572, 90th Cong. 1st Sess. 10-12, 16-17 (1967).

this programming. In fact, it would undermine the 30 year effort by the Commission and Congress to stimulate the kind of programming offered by Station WNYE-TV.

Conclusion

Accordingly, for the reasons set forth above, the City of New York Board of Education respectfully requests that the MST proposal, insofar as it proposes substituting DTV Channel 26 for previously-assigned DTV Channel 24 to Station WNYE-TV-TV, be rejected. In addition, should the Commission conclude that Station WNYE-TV should be assigned a DTV Channel other than Channel 24, Station WNYE-TV requests that any new DTV channel (a) permit it to replicate a portion of its current service comparable to that of other stations in the New York metropolitan area and (b), for the reasons set forth in the Petition for Partial Reconsideration and Clarification filed in this proceeding by the Association of America's Public Television Stations and Public Broadcasting Service,¹⁰ that the new DTV channel be within the "core" of DTV channels which will be allocated for broadcast television at the end of the transition to digital.

Respectfully submitted,

CITY OF NEW YORK BOARD OF EDUCATION



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¹⁰ See Petition for Reconsideration and Clarification of Association of America's Public Television Stations and Public Broadcasting Service in MM Docket No. 87-268, pp. 7-10 (June 13, 1997).

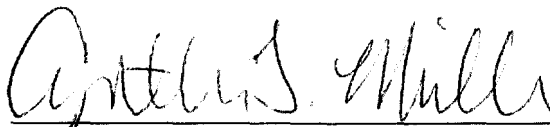
CERTIFICATE OF SERVICE

I, Cynthia T. Miller, do hereby certify that I have on this 17th day of December, 1997, caused copies of the foregoing COMMENTS OF THE CITY OF NEW YORK BOARD OF EDUCATION ON THE EX PARTE SUBMISSION OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. to be delivered by first-class, United States mail, postage prepaid to the following:

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